

**IMPROVEMENTS AGREEMENT
FOR**

THIS AGREEMENT is made and entered into this ____ day of _____, 2008,
by and between (“_____”) and Gallatin County, Montana (“County”).

WHEREAS, it is the intent and purpose of the Subdivider to meet the conditions of approval for the preliminary plat allowing the creation of _____ (the “Subdivision”), as approved by the County Commission on _____; and

WHEREAS, it is the intent and purpose of the Subdivider to obtain final plat approval for the Subdivision; and

WHEREAS, pursuant to Section 8 of the Gallatin County Subdivision Regulations it is the intent and purpose of the Subdivider and the County to enter into this Agreement which will guarantee the full and satisfactory completion of improvements on the property described in this Agreement; and it is the intent of this Agreement, and the parties hereto, to satisfy the improvements guarantee requirements for the final plat approval of the Subdivision.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is hereby agreed as follows:

1. **Subdivision Description.** This Agreement pertains to and includes that property, which is designated and identified as _____, located in Sections _____, Gallatin County, Montana.

2. **Improvements.** Subdivider shall, at its sole cost and expense, install the improvements described on Exhibit “A” attached hereto and incorporated herein (the “Improvements”). The Improvements fulfill portions of Conditions of Approval #5 and #11 of the Preliminary Plat. The estimated cost of the Improvements is Four Thousand Thirty and 00/100 Dollars (\$4030.00) as shown on Exhibit “A”.

3. **Completion of the Improvements.**
The Improvements must be completed by the Subdivider on or before December 31, 2006. The Subdivider shall be allowed extensions of time beyond the completion date only for unavoidable delay caused by strikes, lockouts, acts of God, or other factors beyond the control and ability to remedy of the Subdivider or any agent or contractor hired by, or on behalf of, the Subdivider; provided, however, that no extension of time shall be allowed for any delay

caused by weather conditions. The Subdivider shall, within two days after such delay commences, give notice to the County for its review and approval of the delay, the cause for the delay, the period or anticipated period of the delay and the steps taken by the Subdivider to mitigate the effects of the delay. Any failure of the Subdivider to properly give notice shall be deemed a waiver of any right to an extension of time for the delay.

4. **Inspection.** Representatives of the County shall have the right to enter upon the property at any reasonable time to inspect and to determine if the Subdivider is in compliance with this Agreement. The Subdivider shall permit the County and its representatives to enter upon and inspect the property at any reasonable time.

5. **One-Year Warranty of the Improvements.** The Subdivider hereby warrants the prompt and satisfactory correction of all material defects and deficiencies in the improvements that occur or become evident within one year after acceptance of the improvements by the County ("Warranty Period"). If any such defect or deficiency occurs or becomes evident during such period, then the Subdivider shall, within 10 days after receipt of written demand from the County to do so, correct it or cause it to be corrected. The warranty provided by this Section 5 shall be extended for one full year from the date of repair or replacement of any improvement repaired or replaced pursuant to such demand.

6. **Financial Security Guaranty.** As security to the County for the performance by the Subdivider of the Subdivider's obligations to complete the improvements pursuant to and in accordance with this Agreement, the Subdivider shall prior to the recordation of the final plat deposit with the County security in the amount of Six Thousand Forty-Five and 00/100 Dollars (\$6,045.00) which is 150% of the cost of the improvements as stated on Exhibit "A" in the following form: cash deposit to the Gallatin County Treasurer (the "Cash Deposit"). The Gallatin County Treasurer shall hold the cash deposit in an interest bearing holding account. Upon completion of improvements and release from this Agreement by the Gallatin County Commission, the Gallatin County Treasurer shall release the cash deposit with interest.

7. **Reduction of Security.** If during the term of this Agreement the County reduces the financial assurance requirements commensurate with the completion of improvements, such reduction shall be subject to 10% of the cost of the completed improvements to be held as security for the Warranty Period provided in this Agreement. At the time of acceptance of the completed Subdivision Improvements, the County will issue a written release of the remaining amount of the Cash Deposit, less 10% of the total costs of the Improvements, which shall be withheld by the County as warranty security. The warranty security shall remain in effect for the Warranty Period plus an additional 90 days. Upon completion of the 90 day Warranty Period, and upon written request by the Subdivider, the Gallatin County Treasurer shall release said funds.

8. **Default.**

8.1 *Default.* If the Subdivider defaults in or fails to fully perform any of its obligations in accordance with this Agreement, or fails or refuses to correct any defect or deficiency in the improvements required by this Agreement and such default or failure shall

continue for a period of thirty (30) days after written notice specifying the default is deposited in the United States mail addressed to the Subdivider without being completely remedied, satisfied and discharged, the County shall have, and the Subdivider hereby grants to the County, in addition to all other rights afforded to the County in this Agreement and by law, the right, at the County's option, to complete the construction of the improvements or to correct such defect or deficiency, using either its own forces or contractors hired for that purpose. The County shall have the right to draw from the financial security guarantee pursuant to this Agreement, as well as the right to demand payment directly from the Subdivider, based either on costs actually incurred or on the County's reasonable estimates of costs to be incurred, an amount of money sufficient to defray the entire cost of the work, including legal fees and administrative expenses. The County may enforce any other remedy provided by law. These remedies are cumulative in nature.

8.2. *Liquidated Damages.* Subdivider and County recognize that time is of the essence of this Improvements Agreement. Subdivider recognizes that failure to timely complete improvements agreements results in the County Attorney and staff, Planning staff, Road Department Staff, and often the County Commission and staff, taking valuable time to monitor and manage the completion of the agreement. The parties also recognize that the same County officers and employees must take valuable time should a default of an improvements agreement be taken. Accordingly, instead of providing any such proof, Subdivider and County agree that as liquidated damages for delay (but not as a penalty) Subdivider shall pay County \$150.00 (one hundred fifty dollars) per day for each day that Subdivider fails to fully complete all the required improvements. The sum of \$150.00 per day is exclusive of and in addition to any other remedy to which the County may be entitled pursuant to the default provisions of this agreement.

9. Liability and Indemnity of County.

9.1 *No Liability for County Approval.* The Subdivider acknowledges and agrees (1) that the County is not, and not shall not be, in any way liable for any damages or injuries that may be sustained as the result of the County's issuance of any approvals or acceptances of the improvements or use of any portion of the improvements, and (2) that the County's issuance of any approvals or acceptances does not, and shall not, in any way be deemed to insure the Subdivider, or any of its heirs, successors, assigns, tenants, or licenses, or any third party, against damage or injury of any kind at any time.

9.2 *Indemnification.* The Subdivider agrees to, and does hereby, hold harmless and indemnify the County, and all of its elected and appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims, costs and liability of every kind and nature ("Claims") that may be asserted at any time against any such parties for injury or damage received or sustained by any person or entity in connection with (1) the County's review and approval of any plans for the improvements, (2) the issuance of any approval or acceptance for the improvements, (3) the development, construction, maintenance or use of any portion of the improvements, and (4) the performance by the Subdivider of its obligations under this Agreement and all related agreements; provided, however, that the Subdivider shall have no obligation to indemnify the County for Claims arising out of the County's negligence. The Subdivider further agrees to aid and defend the County in the event

that the County is named as a defendant in an action concerning the improvements provided by this Agreement except where such suit is brought by the Subdivider. The Subdivider is not an agent or employee of the County.

10. **No Waiver of County Rights.** No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision nor will it be deemed to constitute a continuing waiver unless expressly provided for; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The County's failure to exercise any obligation under this Agreement will not constitute the approval of any wrongful act by the Subdivider or the acceptance of any improvement.

11. **Governing Law.** This Agreement shall be construed according to the laws of the State of Montana.

12. **Changes of Law.** Any reference to laws, ordinances, rules, or regulations shall include such laws, ordinances, rules, or regulations as they have been, or they may hereafter, be amended.

13. **Time of Essence.** Time is of the essence in the performance of all terms and provisions of this Agreement.

14. **Assignment.** It is expressly agreed that the Subdivider shall not assign this Agreement in whole or in part, without prior written consent of the County.

15. **Successors.** This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, successors, and assigns.

16. **Notices.** All notices in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof (1) when delivered in person on a business day at the address set forth below or (2) on the third day after being deposited in the United States mail, for delivery by being properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below.

Notices to the County shall be addressed to, and delivered at, the following address:

Gallatin County Commissioners
Gallatin County Courthouse, Room 301
311 West Main
Bozeman, MT 59715

Notices to the Subdivider shall be addressed to, and delivered at, the following address:

Spanish Peaks Holdings, LLC
c/o Peter Forsch
P.O. Box 161470

Big Sky, MT 59716

With a copy to:

Stephen R. Brown
Registered Agent for Spanish Peaks Holdings, LLC
Garlington, Lohn & Robinson, PLLP
P.O. Box 7909 / 199 West Pine
Missoula, MT 59807

By notice complying with the requirements of this Section, each party shall have the right to change the address or addresses or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

17. **Enforcement.** The parties hereto may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation: specific performance, enforce or compel the performance of this Agreement; provided, however, that the Subdivider agrees that it will not seek, and does not have the right to seek, to recover a judgment for monetary damages against the County or any elected or appointed officials, officers, employees, agents, representatives, engineers, or attorneys thereof, on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement.

18. **Amendments.** All amendments to this Agreement shall be in writing and shall be approved by the Subdivider and the County.

19. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

20. **Authority to Execute.** The County and the Subdivider hereby acknowledge and agree that all required notices, meetings and hearings have been properly given and held by the County with respect to the approval of this Agreement and agree not to challenge this Agreement or any of the obligations created by it on the grounds of any procedural infirmity or any denial of any procedural right. The County hereby warrants and represents to the Subdivider that the persons executing this Agreement on its behalf have been properly authorized to do so by the County Commissioners. The Subdivider hereby warrants and represents to the County (1) that it is the record owner of fee simple title to the Subdivision, (2) that it has the right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth herein and to bind the Subdivision as set forth herein, (3) that all legal action needed to authorize the execution, delivery and performance of this Agreement have been taken, and (4) that neither the execution of this Agreement nor the performance of the obligations assumed by the Subdivider hereunder will (i) result in a breach or default under any agreement to which the Subdivider is a party or to which it or the Subdivision is bound or (ii) violate any statute, law, restriction, court order, or agreement to which the Subdivider or the Subdivision is subject.

COUNTY:

BOARD OF COUNTY COMMISSIONERS
GALLATIN COUNTY, MONTANA

William A. Murdock, Chairman Date

Joe P. Skinner, Commissioner Date

R. Stephen White, Commissioner Date

ATTEST:

Charlotte Mills, Clerk and Recorder
Gallatin County, Montana

Approved as to Legal Content:

Deputy Gallatin County Attorney

EXHIBIT A

